

UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

ANTIA GARCÍA-OCASIO,

Claimant,

Civil No. 08-2311 (JAF)

V.

COMMISSIONER OF SOCIAL SECURITY,

## Respondent.

## **OPINION AND ORDER**

Claimant, Antia García-Ocasio, petitions this court under 42 U.S.C. § 405 (g) to review the decision of Respondent, Commissioner of Social Security ("Commissioner"), denying the payment of disability benefits to Claimant. (Docket No. 2.) Commissioner opposes the petition. (Docket No. 9.)

I.

## **Factual and Procedural Synopsis**

#### A. Relevant Medical Record

The following facts are derived from the parties' filings (Docket Nos. 1; 2; 7; 9) and the record in this case ("R") (Docket No. 2). Claimant, a high-school graduate, was born on April 18, 1953, and worked as an office secretary. She left her job on December 29, 2000.

Claimant suffered from a combination of impairments, including right-arm bursitis, tendinitis, osteoarthritis, disc bulge, a herniated disk, lumbar muscle spasms, fibromyalgia, and a major depressive disorder. Dr. Ana H. Martinez, a rheumatologist, evaluated

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1           Claimant on June 18, 2003, after complaints of multiple joint pain.  
2           (R. at 56-59.) On February 6, 2004, Dr. William Matos examined  
3           Claimant after she complained about morning stiffness, as well as  
4           joint pain. (R. at 67-70.) Dr. Sánchez performed an assessment of  
5           Claimant's physical residual functioning capacity ("RFC") in March  
6           2004. (R. at 92-99.) Dr. Sánchez concluded that Claimant could lift  
7           twenty-five pounds frequently and fifty pounds occasionally; stand  
8           and walk for six hours in an eight-hour workday; and sit for about  
9           six hours in an eight-hour workday. (R. at 93.) Furthermore,  
10           Claimant could climb stairs and ramps, balance and kneel, and could  
11           occasionally stoop, crouch, or crawl. (R. at 94.) Claimant continued  
12           to see Dr. Martínez for the next several years. On August 17, 2007,  
13           Claimant visited Dr. David A. Flores, a psychiatrist, for anxiety and  
14           depression. (R. at 120.) Claimant continued to visit Dr. Flores for  
15           a total of ten times, the last on March 8, 2006. Dr. Flores found  
16           Claimant in a state of severe depression. (R. at 127.) Furthermore,  
17           he stated that Claimant had a very poor prognosis and could not  
18           return to work. (R. at 259-262.)

19           **B. Procedural Summary**

20           Claimant filed a Disability Insurance Benefits application on  
21           August 13, 2003, alleging disability beginning December 29, 2002. It  
22           was denied initially on March 16, 2004, and upon reconsideration on  
23           July 22, 2004. Afterwards, on March 27, 2006, a hearing ("ALJ  
24           hearing") was held before Administrative Law Judge ("ALJ") Gilbert  
25           Rodríguez. Claimant, who was represented by counsel, testified at

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1                   the hearing. (R. at 264-281.) On June 28, 2006, ALJ Rodriguez issued  
2                   a decision in which he concluded that Claimant did not engage in  
3                   substantial gainful activity during the period from her alleged onset  
4                   date of December 29, 2002, through her date last insured of  
5                   December 31, 2005. (R. at 36.) The ALJ concluded that Claimant was  
6                   not under a disability because she had the RFC to perform a range of  
7                   medium-level work that did not require dealing with the public and  
8                   avoided frequent stooping, crouching, and crawling and concentrated  
9                   exposure to vibration. (R. at 31-42.) Thus, the ALJ determined  
10                  Claimant could perform her past work as a secretary.

11                  The Appeals Council reviewed the ALJ's decision and remanded on  
12                  the issue of the duration and severity of Claimant's depression. (R.  
13                  at 16.) The ALJ held a second hearing on January 22, 2008, in which  
14                  Claimant testified once again. (R. at 282-311.) In addition, Carmen  
15                  Margarita Valladares, a vocational expert, furnished testimony. In  
16                  his second decision of April 25, 2008, the ALJ concluded that  
17                  Claimant has not been disabled through December 31, 2005, the last  
18                  day she qualified for the disability insured status. (R. at 30.) The  
19                  ALJ opined that Claimant's RFC did not allow her to perform her past  
20                  relevant work, but she, nevertheless, had the RFC to perform jobs  
21                  that existed in significant numbers in the national economy. (R. at  
22                  30.)

23                  On September 24, 2008, the Appeals Council denied Claimant's  
24                  request to review the ALJ's second decision. (R. at 4-8.) On  
25                  November 13, 2008, Claimant filed the present petition seeking review

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1 of the ALJ's second decision. (Docket No. 2.) Commissioner filed a  
2 memorandum of law on May 14, 2009. (Docket No. 9.) Claimant has not  
3 replied.

4 **II.**5 **Standard of Review**

6 Under the Social Security Act ("the Act"), an individual is  
7 disabled if she is unable to do her prior work or, "considering her  
8 age, education, and work experience, engage in any other kind of  
9 substantial gainful work which exists in the national economy." 42  
10 U.S.C. 423 (d). The Act provides that "the findings of the  
11 Commissioner . . . as to any fact, if supported by substantial  
12 evidence, shall be conclusive." 42 U.S.C. § 405(g). Substantial  
13 evidence exists "if a reasonable mind, reviewing the evidence in the  
14 record as a whole, could accept it as adequate to support the  
15 conclusion." Irlanda-Ortiz v. Sec'y of Health & Human Servs., 955  
16 F.2d 765, 769 (1st Cir. 1991).

17 Commissioner's decision must be upheld if we determine that  
18 substantial evidence supports the ALJ's findings, even if we would  
19 have reached a different conclusion had we reviewed the evidence de  
20 novo. Lizotte v. Sec'y of Health & Human Servs., 654 F.2d 127, 128  
21 (1st Cir. 1981). When reviewing a denial of benefits, the ALJ must  
22 consider all evidence contained in the record. 20 C.F.R.  
23 § 404.1520(a)(3). Matters pertaining to credibility and "conflicts in  
24 the evidence . . . are for the ALJ, rather than the courts to  
25 resolve." Evangelista v. Sec'y of Health & Human Servs., 826 F.3d 31,

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35 (1st Cir. 1987). The ALJ may be reversed only if we find that he arrived at the decision "by ignoring evidence, misapplying the law, or judging matters entrusted to experts." Nguyen v. Chater, 72 F.3d 31, 35 (1st Cir. 1999). Review of denial of Social Security disability benefits is limited to determining whether the ALJ deployed the proper legal standards and found facts upon the proper quantum of evidence.

III.

## Analysis

#### **A. Physical Impairments**

The record reflects that the ALJ weighed the objective findings from multiple physicians and several laboratory findings of Claimant's physical condition against the severity requirements under the Act. (R. at 23-26.) The ALJ concluded that Claimant's physical problems did not satisfy the level of severity required under the Act. As it appears that the ALJ's evaluation of Claimant's physical RFC took into consideration all medical evidence, we find that the ALJ's assessment of Claimant's physical impairments is supported by substantial evidence.

#### B. Mental Impairments

We similarly analyze the ALJ's method in assessing Claimant's alleged mental impairment. We consider whether the ALJ properly concluded that Claimant was not mentally disabled based on the evidence in the record. (R. at 24.) An ALJ is not qualified to assess the claimant's RFC based on bare medical findings, as such are

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1           unintelligible to laypersons. Berrios López v. Sec'y of Health &  
2 Human Servs., 951 F.2d 427, 430 (1st Cir. 1991).

3           The record reveals that Dr. Flores, a psychiatrist, examined  
4 Claimant with regard to her alleged mental symptoms. (R. at 24.)  
5 Claimant saw Dr. Flores a total of seven times between August 17,  
6 2005, and the last date she was insured, December 31, 2005. In his  
7 findings, Dr. Flores concluded that "due to her anhedonia, poor  
8 modification and severe cognitive deterioration, [Claimant] would not  
9 be able to perform a single hour of normal uninterrupted work. She  
10 does not persist in her goals and continues to be totally disabled to  
11 work in any type of remunerated task." (R. at 123.) Furthermore, the  
12 vocational expert's testimony that a person under Claimant's mental  
13 condition "could not do any work in our the national economy" (R. at  
14 310) supports this conclusion.

15           Dr. Flores first examined Claimant on August 17, 2005, which was  
16 within the relevant disability period from December 29, 2002, to  
17 December 31, 2005. Upon examining the record, we find no evidence to  
18 contradict Dr. Flores' psychiatric assessments. More importantly, we  
19 fail to find any other mental or psychiatric evaluations at all. In  
20 his second opinion, the ALJ even acknowledged that Claimant "has not  
21 received any prior psychiatric treatment nor has she alleged any  
22 psychiatric symptoms prior to this date." (R. at 24.) Because  
23 Dr. Flores' medical evaluation constitutes Claimant's sole mental  
24 evaluation in the record, this unique assessment must be taken into  
25 consideration. Indeed, Dr. Martinez, a rheumatologist, referred

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1       Claimant to Dr. Flores precisely because she suspected depression in  
2       Claimant. (R. at 277).

3             Turning to the merits, while ALJ Rodríguez asserted that this  
4       particular psychiatric evaluation is "in conflict with and not  
5       well-supported in severity to the preponderance of the medical or  
6       other evidence record" (R. at 28), we believe that such judgment is  
7       erroneous. The record contains only a single instance in which a  
8       treating medical doctor, Dr. Flores, examined Claimant for the  
9       exclusive purpose of assessing her psychiatric condition. (R. at 120-  
10      23.) Without evidence to contradict Dr. Flores' findings, his  
11      findings must not be brushed aside. The ALJ may not ignore or  
12      fabricate evidence. Therefore, we do not find substantial evidence  
13      in the record to support the ALJ's determination that Claimant lacks  
14      a mental impairment which would severely limit her non-exertional  
15      abilities to work.

16             The record does not reveal the exact date on which Dr. Martínez  
17      referred Claimant to Dr. Flores. Meanwhile, the record does reflect  
18      that Dr. Flores first examined Claimant on August 17, 2005. Since  
19      Dr. Martínez examined Claimant for the first time on June 18, 2003  
20      (R. at 56), the referral, and the onset of Claimant's alleged  
21      depression, must have taken place at some point between June 18,  
22      2003, and August 17, 2005.

23             For the aforementioned reasons, we find that the ALJ's mental  
24      disability determination for the period from December 29, 2002,  
25      ending December 31, 2005, lacks basis in substantial evidence. See 42

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1 U.S.C. § 405(g). When an ALJ's evaluation falls short of evidentiary  
2 support, the standard remedy is to remand for further consideration  
3 of relevant medical records. See Seavy v. Barnhart, 276 F.3d 1, 12-13  
4 (1st Cir. 2001) (noting that two avenues for remand exist under the  
5 fourth and sixth sentences of 42 U.S.C § 405(g)).

6 **IV.**

7 **Conclusion**

8 In view of the foregoing, we hereby **AFFIRM IN PART** the  
9 Commissioner's determination with respect to Claimant's physical  
10 impairments. We **GRANT** Claimant's petition (Docket No. 2) and **REMAND**  
11 the case to Commissioner pursuant to sentence four of 42 U.S.C.  
12 § 405(g), but only with respect to Claimant's mental condition  
13 subsequent to June 17, 2003, and prior to the last insured date of  
14 December 31, 2005.

15 **IT IS SO ORDERED.**

16 San Juan, Puerto Rico, this 12<sup>th</sup> day of November, 2009.

17 s/José Antonio Fusté  
18 JOSE ANTONIO FUSTE  
19 Chief U.S. District Judge